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85-0197/26

OLL 85-1015

29 March 1985

DD/A REGISTRY
FILE: 106-13

MEMORANDUM FOR: See Distribution

FROM: Chief, Legislation Division
Office of Legislative Liaison

SUBJECT: OPM Supplemental Retirement Plan

1. The Agency has been requested to comment on the attached draft "Federal Employee's Retirement System Act of 1985", which represents OPM's proposed new retirement system for those Federal employees (hired after December 31, 1983) who are covered by Social Security. ~~I would appreciate receiving your comments on the attached proposal no later than COB Friday, 12 April 1985.~~

2. As you know, the Social Security amendments of 1983 provided that new Federal employees hired on or after January 1, 1984 would be covered under Social Security. These amendments presently apply with respect to all newly hired Agency employees. During the past two-year period, we have been operating under a special transitional retirement system for these newly hired employees with the understanding that an entirely new retirement system, intended to supplement Social Security, would be established for these new employees by the end of 1985. The attached Federal Employee's Retirement System Act that is proposed by OPM sets forth this new retirement system.

3. The attached proposal would establish a defined contribution plan wherein employing agencies would contribute 11.6% of each employee's wages to a retirement fund to be held in an account in the Treasury for that employee. This 11.6% contribution would be funded through specific appropriation by the employing agency and would not be taken out of the employee's salary. The employee would, of course, still pay a percentage of his salary for Social Security coverage. In addition, the employee could voluntarily contribute up to $5,000 per year into a Federal employee IRA. Benefits under both the defined contribution plan and this voluntary IRA would be available at age 59-1/2. Early retirement under the proposal would continue to be permitted for law enforcement officers, fire fighters, and air traffic controllers.

4. As you are aware, the Director, in correspondence with OMB, has requested that the Agency's employees be exempted from certain of the Administration's proposed retirement changes, including specifically those changes affecting early retirement for specific groups of Federal employees. While OMB has orally consented to exempt CIARDS participants from certain of these proposed changes, no decision has yet been made by OMB to expand this exemption to include CIA Civil Service participants. In providing your comments on the attached bill, you should assume that Agency employees hired on or after December 1, 1984 will be subject to the proposal's provisions.

5. I will be happy to provide additional information or answer whatever questions you may have with respect to the attached proposal [redacted]

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[redacted]

Attachment:
As Stated

Distribution:
1 - SA/DCI
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1 - D/OLL
1 - DD/OLL
1 - C/LD/OLL
1 - OLL Chrono
1 - LEG Subject
1 - SWH Signer

STAT

OLL:LEG:[redacted]:dpt (28 Mar 85)

United States
Office of Personnel Management
Washington, D.C. 20415

In Reply Refer To   Your Reference

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

MAR 11 1985

Attention: Assistant Director
for Legislative Reference

Dear Mr. Stockman:

The Office of Personnel Management has prepared the enclosed legislative proposal, "To amend title 5, United States Code, to establish a Federal Employees' Retirement System to supplement Social Security benefits, and for other purposes," together with appropriate accompanying documents.

Since January 1, 1984, new Federal employees and certain other individuals in all three branches of Government have been covered by Social Security. The existing Civil Service Retirement System predated the Social Security System and, thus, was designed to stand alone as the sole source of retirement income. There is a consensus, expressed in Public Law 98-168, that Social Security coverage for Federal employees should be supplemented by an employer-sponsored staff retirement plan, as it is for many private sector employees.

The enclosed proposal would establish a system to provide additional retirement income to new Federal employees who would be covered by Social Security. The cost of this defined contribution plan would be in line with the pension costs of generous private sector pension plans, about 19 percent of pay including the employer share of Social Security taxes. All of the money would be invested in Treasury securities.

We would appreciate receiving your advice as to whether the submission of this legislative proposal to Congress would be consistent with the Administration's program.

Sincerely,

Donald J. Devine
Director

Enclosures

 CON 114-24-3

United States
Office of Personnel Management

Washington, D.C. 20415

In Reply Refer To: Your Reference

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The Office of Personnel Management submits herewith a legislative proposal, "To amend title 5, United States Code, to establish a Federal Employees' Retirement System to supplement Social Security benefits, and for other purposes." We request that you refer this proposal to the appropriate committee for early consideration.

There is an urgent need to create a supplemental retirement program for new employees hired after January 1, 1984. After that date, new Federal employees and certain other individuals in all three branches of Government have been covered by Social Security, but without any permanent additional staff retirement plan. The existing Civil Service Retirement System predated the Social Security system and, therefore, was designed to stand alone as the sole source of retirement income. With the passage of Public Law 98-168, a Congressional consensus was created to adopt a complementary staff retirement plan for Federal employees.

A recent study for the executive branch by the consulting firm of Towers, Perrin, Forster and Crosby found that benefits under the present retirement system are distributed very unequally. They found that about 45 percent of new entrants into the existing retirement system actually subsidized that system, and another 15 percent received few real benefits. Others, retiring as early as age 55, do very well. The system is nonetheless costly compared to plans in the private sector. The consulting firm found that the actuarial cost to the Government is 28 percent of its payroll, compared to the average non-Federal retirement plan in the private sector including Social Security, of 17 percent of payroll. And the dynamic unfunded liability is an incredible $528.1 billion. Since employees contribute only seven percent of pay to the system the remaining 80 percent of the cost must be borne by the taxpayer.

The Administration proposal would avoid the unfairness of the present system. Its major feature would add to Social Security a wholly Government-supported defined contribution retirement system. Employees will pay nothing beyond Social Security. The new system will avoid the bias in favor of very long-term employees, by providing full vesting rights after just one year of employment. Most employees would be able to receive benefits, rather than the many subsidizing the few. A Federal employee IRA is established with contributions up to $5,000 per year with benefits available at age 59 1/2, the same as for a private IRA. The total

 CON 114-24-3

cost to the Government would be 19 percent of payroll, above the average value in the private sector and comparable to the level of benefits offered by Fortune 500 corporations. Employees covered under the existing system would be eligible to transfer to the new system. We expect many employees with relatively short periods of service to exercise this option.

Specifically, the proposal includes the following major provisions:

- Agencies would contribute 11.6 percent of pay to the supplemental plan, plus an additional amount for certain special features, such as disability benefits. Although employees would not be required to contribute any funds to the basic defined contribution plan, they could contribute up to $5,000 annually to a special Federal employees savings account. Benefits would depend on these amounts, plus interest earned by this money.

- Employees could retire as early as age 59 1/2 with as little as one year of service. That is, vesting would take place after one year. Retirement under Social Security, of course, cannot take place even for reduced benefits until age 62.

- Employees could elect a variety of forms of annuity, including an annuity with annual increases based upon inflation (COLA), or they could receive a lump-sum payment for the balance in their account.

- Early retirement would continue to be permitted for law enforcement officers, firefighters, and air traffic controllers. In order to make early retirement feasible, a special supplement will be paid to these employees until Social Security begins at age 62. These special benefits will be pre-funded through a surcharge to agencies employing each of these special employees.

- Amounts owed to individuals would be separately identified and balances kept separately, but funded through the existing Civil Service Retirement System account and managed by the Office of Personnel Management.

- The unfunded liability of the existing Civil Service Retirement System would be paid off by the Treasury in forty years, thus ensuring that sufficient funds would be available so that the system can meet its remaining obligations.

We believe the supplemental retirement plan would serve as a sound recruitment and retention incentive for Federal employees and would achieve a much needed balance between the desire of Federal employees to have a good retirement system and the demands of the Nation's taxpayers for restraint in the costs of Government programs. It would be fully funded, rather than create a half trillion dollar liability. Most importantly, it would be fair to all Federal employees.

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The Office of Management and Budget advises that enactment of this proposal would be in accord with the program of the President.

A similar letter is being sent to the Speaker of the House of Representatives.

Sincerely,

Donald J. Devine
Director

Enclosures

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Sincerely,

Donald J. Devine
Director

Enclosures

United States
Office of
Personnel Management

Washington, D.C. 20415

In Reply Refer To

Your Reference

Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

The Office of Personnel Management submits herewith a legislative proposal, "To amend title 5, United States Code, to establish a Federal Employees' Retirement System to supplement Social Security benefits, and for other purposes." We request that you refer this proposal to the appropriate committee for early consideration.

There is an urgent need to create a supplemental retirement program for new employees hired after January 1, 1984. After that date, new Federal employees and certain other individuals in all three branches of Government have been covered by Social Security, but without any permanent additional staff retirement plan. The existing Civil Service Retirement System predated the Social Security system and, therefore, was designed to stand alone as the sole source of retirement income. With the passage of Public Law 98-168, a Congressional consensus was created to adopt a complementary staff retirement plan for Federal employees.

A recent study for the executive branch by the consulting firm of Towers, Perrin, Forster and Crosby found that benefits under the present retirement system are distributed very unequally. They found that about 45 percent of new entrants into the existing retirement system actually subsidized that system, and another 15 percent received few real benefits. Others, retiring as early as age 55, do very well. The system is nonetheless costly compared to plans in the private sector. The consulting firm found that the actuarial cost to the Government is 28 percent of its payroll, compared to the average non-Federal retirement plan in the private sector including Social Security, of 17 percent of payroll. And the dynamic unfunded liability is an incredible $528.1 billion. Since employees contribute only seven percent of pay to the system the remaining 80 percent of the cost must be borne by the taxpayer.

The Administration proposal would avoid the unfairness of the present system. Its major feature would add to Social Security a wholly Government-supported <u>defined contribution</u> retirement system. Employees will pay nothing beyond Social Security. The new system will avoid the bias in favor of very long-term employees, by providing full vesting rights after just one year of employment. Most employees would be able to receive benefits, rather than the many subsidizing the few. A Federal employee IRA is established with contributions up to $5,000 per year with benefits available at age 59 1/2, the same as for a private IRA. The total

cost to the Government would be 19 percent of payroll, above the average value in the private sector and comparable to the level of benefits offered by Fortune 500 corporations. Employees covered under the existing system would be eligible to transfer to the new system. We expect many employees with relatively short periods of service to exercise this option.

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We believe the supplemental retirement plan would serve as a sound recruitment and retention incentive for Federal employees and would achieve a much needed balance between the desire of Federal employees to have a good retirement system and the demands of the Nation's taxpayers for restraint in the costs of Government programs. It would be fully funded, rather than create a half trillion dollar liability. Most importantly, it would be fair to all Federal employees.

The Office of Management and Budget advises that enactment of this proposal would be in accord with the program of the President.

A similar letter is being sent to the President of the Senate.

Sincerely,

Donald J. Devine
Director

Enclosures

STATEMENT OF PURPOSE
AND JUSTIFICATION

To accompany a bill

"To amend title 5, United States Code, to establish a Federal Employees' Retirement System to supplement Social Security benefits, and for other purposes."

This draft bill would establish a new retirement system for those Federal employees who are covered by Social Security. The Civil Service Retirement System was established prior to Social Security, and was designed to be adequate as the sole source of retirement income for Federal employees. In 1983, however, Congress enacted the Social Security Amendments of 1983, which, among other Social Security changes, brought new Federal employees (and certain others) under Social Security, beginning with those first hired on or after January 1, 1984. Later in 1983, recognizing that dual coverage under Social Security and the Civil Service Retirement System would be too costly for affected employees and the Government, and would provide an unnecessarily high level of benefits as well, Congress established a special transitional retirement system for the affected employees, with the expectation that an entirely new retirement system, designed to supplement Social Security, would be established by the end of 1985. The Federal Employees' Retirement System that would be established by this bill is designed to fulfill this need.

This new Retirement System would be a defined contribution plan, that is, a plan where a predetermined amount of money is set aside each year to provide for an employee's retirement, and the retirement benefit is determined by the amount of money that has been accumulated during the employee's career, including the interest the money has earned. Under the Federal Employees' Retirement System, employing agencies would contribute 11.6 percent of each employee's wages to the Retirement Fund, to be held in an account in the Treasury for that employee. This contribution would, of course, be in addition to the employer share of Social Security taxes, which the agency would also be paying.

For every employee who works at least one year, this money would be fully and automatically vested. When the employee reaches age 59 1/2--the same age that individuals can begin drawing on their Individual Retirement Account (IRA) savings--and separates from the Government, he or she could receive the amount that has accumulated in his or her account, including the interest the Treasury has paid on it over the years. At the employee's option, the money could be received either in a lump sum or as an annuity. A variety of forms of annuity would be provided, including fixed term annuities, life annuities, joint and survivor annuities (which would be required for married employees unless jointly waived by the employee and spouse), and annuities with cost-of-living adjustments. The amounts of all of the forms of annuity would be actuarially determined, on the basis of the balance in the employee's account at the time the annuity commences.

The new Retirement System would include generous disability benefits. An employee who, after completing at least 18 months of service, becomes totally disabled would be entitled to receive, starting six months after the onset of the disability, a benefit equal to 60 percent of the pre-disability salary, reduced by the amount of any Social Security disability benefit. If the employee is not totally disabled (i.e., not disabled to the degree required under the Social Security definition of disability), but is unable to perform the duties of his or her position (or of any other position to which the agency could reassign the employee without a pay cut and within the same commuting area), the benefit would be 40 percent of the pre-disability salary. For both categories of disability beneficiaries, the amount of the benefit would be increased in subsequent years by the percentage change in the Consumer Price Index. While the employee is on the disability rolls, the former employing agency would continue to contribute 11.6 percent of the employee's final rate of basic pay (increased by subsequent average General Sechedule pay increases) to the employee's account in the Retirement Fund. Then, at age 65, the special disability benefits would end, and the employee would begin receiving regular Social Security benefits and the annuity or lump-sum payment based on his or her retirement account. The special disability benefit would be financed entirely by contributions made by the employing agencies to the Retirement Fund, based on the normal cost of the disability benefits. The cost could be varied from agency to agency, if agencies have unusually high or low rates of disability.

The new Retirement System would also include special benefits for survivors of employees who die in service. A surviving spouse would be entitled to the balance in the deceased employee's retirement account, either as a lump sum or as an annuity. However, if there was less than one year's pay in the employee's retirement account, the surviving spouse would be entitled to at least that much, either in lump-sum or annuity form. These survivor benefits would, of course, be in addition to Social Security survivor benefits.

The new Retirement System would preserve the ability of certain special categories of employees to retire early. It is impractical and undesirable to expect law enforcement officers, firefighters, and air traffic controllers to work at these jobs until they reach eligibility for Social Security benefits at age 62. Therefore, these employees would be permitted to retire and receive their retirement accounts, either in lump-sum or annuity form, as early as age 50, and would also receive a special benefit, designed to approximate their expected Social Security benefit, from the date of their early retirement until age 62. This special benefit would be financed by a special normal cost payment by the employing agencies to the Retirement Fund.

Another major feature of the new Retirement System would be a Federal Employees' Savings Plan. Under this Plan, employees could contribute up to $5,000 a year to the Fund, and the amount contributed would be deductible from the employee's gross income in the year contributed. The money contributed would be held in the Fund, earning interest, and would be available for distribution in the same manner as an IRA.

The bill also includes provisions affecting the current Civil Service Retirement System. Employees under that System would be permitted to move to the new System, and if they did, their account in the new Retirement System's basic plan would be immediately credited with all of their accumulated contributions to the Civil Service Retirement System, plus an equal amount representing the matching agency contributions, plus an amount representing the interest their own and the agency contributions have earned while invested in the Civil Service Retirement Fund.

Since no new employees will be entering the Civil Service Retirement System in the future, the bill ensures the financial ability of that closed System to meet its financial obligations. This will be done by paying off the unfunded liability of the Civil Service Retirement Fund in equal annual installments over the next 40 years.

A BILL

To amend title 5, United States Code, to establish a Federal Employees' Retirement System to supplement Social Security benefits, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employees' Retirement System Act of 1985".

Sec. 2. (a) Chapter 83 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter.

"SUBCHAPTER IV--FEDERAL EMPLOYEES' RETIREMENT SYSTEM

"§8351. Purpose

"It is the purpose of this subchapter to establish a Federal Employees' Retirement System under which those employees of the United States who are subject to the provisions of the Social Security Act may accrue and receive, as deferred compensation for their service, retirement, survivor, and disability benefits to supplement the old age, survivors, and disability benefits provided under title II of the Social Security Act, and to encourage and facilitate savings by such employees.

"§8352. Definitions

"For the purpose of this subchapter--

"(1) 'employee' means--

"(A) an employee as defined in section 2105 of this title;

"(B) a Member of Congress as defined in section 2106 of this title;

"(C) a Congressional employee as defined in section 2107 of this title;

"(D) an employee of the United States Postal Service or the Postal Rate Commission; and

SECTION-BY-SECTION ANALYSIS

To Accompany a Draft Bill

"To amend title 5, United States Code, to establish a Federal Employees' Retirement System to Supplement Social Security Benefits, and for other purposes."

The first section titles the bill as the "Federal Employees' Retirement System Act of 1985."

Section 2 contains amendments to chapter 83 of title 5, United States Code, designed to establish a system to provide additional retirement income to those Federal employees who are covered by Social Security.

Subsection 2(a) establishes the Federal Employees' Retirement System by adding a new subchapter IV as follows:

Section 8351. Purpose

This section states that the purposes of this subchapter are to establish a Federal Employees' Retirement System so that employees of the United States who are covered by Social Security may supplement those benefits with deferred compensation in the form of retirement, survivor, and disability benefits, and to encourage and facilitate savings by such employees.

Section 8352. Definitions

Paragraph [1] of this section defines "employee" as including: an employee as defined in section 2105 of title 5, United States Code; a Member of Congress as defined in section 2106 of that title; a Congressional employee as defined in section 2107 of that title; an employee of the United States Postal Service or the Postal Rate Commission; and an individual appointed to the office staff of a former President under section 1(b) of the Act of August 25, 1958; and excluding: a justice or judge of the United States, as defined by section 451 of title 28, United States Code; an individual subject to another retirement system for employees of the United States; and an individual who performs temporary or intermittent service (but not individuals hired for part-time career employment as defined in section 3401(2) of title 5, United States Code) and is excluded on that basis by regulations of the Office of Personnel Mangement in the case of an individual employed by an executive agency, or the appointing official or head of an employing agency outside the executive branch.

Paragraph (2) of this section defines "wages" to be as defined in section 3121(a) of title 26, United States Code, including remuneration excluded by paragraph (1) of such section 3121(a).

Paragraph (3) of this section defines "Fund" as the Federal Employees' Retirement Fund established under by 8358 of title 5, United States Code, within the Civil Service Retirement and Disability Fund.

Paragraph (4) of this section defines "Office" as the Office of Personnel Management.

Paragraph (5) of this section defines "law enforcement officer" as an employee whose position consists of duties that primarily involve the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or the protection of officials of the United States against threats to personal safety, and is determined by the employing agency to require limiting employment opportunities to young and physically vigorous individuals.

Paragraph (6) of this section defines "firefighter" as an employee whose position consists of duties that primarily involve work directly connected with the control and extinguishment of fires and is determined by the employing agency to require limiting employment opportunities to young and physically vigorous individuals.

Section 8353. Contributions

Subsection (a) of this section requires each agency employing an employee who is covered by the Federal Employees' Retirement System to contribute each pay period to the Federal Employees' Retirement Fund an amount equal to 11.6 percent of the wages of the employee. In the case of a former employee who is receiving disability benefits under section 8355 of title 5, United States Code, the agency that employed the individual prior to separation for disability is required to contribute an amount equal to 11.6 percent of the individual's final rate of basic pay, increased by the subsequent cumulative average increase in General Schedule pay rates under section 5305 of title 5, United States Code.

Subsection (b) of this section requires that, in addition to the amounts contributed under subsection (a) of this section, each agency employing a covered employee shall contribute each pay period amounts determined by the Office of Personnel Management to be appropriate under section 8358(b) of title 5, United States Code.

Subsection (c) of this section requires that the contributions required under this section be paid from the appropriation or fund used to pay the employee involved. In the case of an elected official, the contributions must be drawn from the appropriation or fund available for payment of other salaries of the office or establishment. In the case of an employee who is paid by the Clerk of the House of Representatives, the Clerk may pay the contributions from the contingent fund of the House.

Section 8354. Employee retirement accounts; payments of benefits

Subsection (a) of this section provides that amounts contributed on behalf of an employee under section 8353(a) of title 5, Unites States Code, plus interest earned by such amounts will be held in the Federal Employees' Retirement Fund in an account for the employee until disposed of in accordance with this section. It also requires the Office of Personnel Management, in cooperation with agencies, to furnish each covered employee or former employee on whose behalf an account is being held with an annual statement of the account balance.

Subsection (b) of this section provides that, for any employee who leaves covered employment with less than one continuous year of such service, any money in the employee's account is irrevocably forfeited for use by the Office of Personnel Mangement as provided in section 8358(b)(1) of title 5, United States Code.

Subsection (c) of this section provides that, except as specified in subsection (b) of this section, at the later of age 59 1/2 (age 50 in the case of a law enforcement officer, firefighter, or air traffic controller) or separation from covered employment, an employee or former employee may apply for and is entitled to either a lump-sum payment of the balance in the employee's account or an annuity paid on the basis of that balance as provided in subsection (d) of this section.

Subsection (d) of this section requires the Office of Personnel Management to provide for a variety of forms of annuity, including annuities for fixed terms of years, annuities for the lives of the employee and spouse (which are automatically provided to each married employee unless jointly waived by the employee and spouse), annuities for the lives of the employee and an individual having an insurable interest in the employee, and annuities which increase in response to inflation. It also requires that annuities under this system be determined in accordance with generally accepted actuarial principles and without regard to sex.

Subsection (e) of this section provides that if an employee or former employee dies after completing at least 18 months of covered service, but before receiving payment of the lump-sum balance in the retirement account or an initial annuity payment, and is survived by a spouse, the surviving spouse is entitled to elect either a lump-sum payment or an annuity based on the balance in the employee's account, or, in the case of an active employee who dies while covered by the system, an amount equal to the employee's final annual rate of basic pay if that exceeds the employee's account balance.

Subsection (f) of this section provides that if an employee or former employee dies after completing at least one year of covered service but before receiving payment of the lump-sum balance or an initial annuity payment, and is not survived by a spouse who is entitled to benefits under subsection (e) of this section, the balance in the employee's account is to be distributed in accordance with regulations of the Office of Personnel Management which are consistent with section 8342(c) of title 5, United States Code.

<u>Section 8355. Disability benefits</u>

Subsection (a) of this section provides that an employee who completes 18 months of covered service, and is either disabled within the definition of disability in section 223 of the Social Security Act or determined by the Office of Personnel Management to be unable, because of disease or injury, to perform useful and efficient service in the employee's position or in any other position to which the agency could reassign the employee in the same commuting area and without a reduction in pay (taking into account benefits under subchapter VI of chapter 53 of title 5 United States Code), is entitled to disability benefits under this section.

Subsection (b) of this section provides that an employee who is entitled to disability benefits by virtue of meeting the definition in section 223 of the Social Security Act is to be paid benefits by the Office of Personnel Management equal to 60 percent of the employee's monthly rate of basic pay immediately prior to separation for disability, with that rate increased annually by the Office based on the percentage change in the Consumer Price Index. It also requires the reduction of such disability benefits by the full amount of any disability benefits received by the employee under the Social Security Act. For a employee who is entitled to disability benefits because of a determination by the Office of inability, because of disease or injury, to perform useful and efficient service in the employee's position, the subsection requires payment by the Office each month of benefits equal to 40 percent of the employee's monthly rate of basic pay immediately prior to separation for disability, with that rate increased annually by the Office based on the percentage change in the Consumer Price Index.

Subsection (c) of this section provides that disability benefits under this section commence on the first day of the first month beginning six months after the employee ceases, because of the disability, to perform useful and efficient service.

Subsection (d) of this section provides that disability benefits for an employee who is entitled on the basis of the Social Security definition of disability shall terminate on the earlier of the last day of the month in which the employee either becomes 65 years of age or is determined to no longer fall within the Social Security definition of disability. It also specifies that disability benefits for an employee who is entitled because of a determination of inability to perform useful and efficient service by the Office of Personnel Management shall terminate on the earliest of the last day of the month in which (1) the employee becomes 65 years of age, (2) the Office finds the employee medically recovered from the disability, (3) the Office determines that the employee has recovered earning capacity on the basis of evidence that the employee has been working with earnings reasonably comparable to those of the position the employee left due to disability, or (4) the employee is either re-employed by the former employing agency in a position in the same commuting area with earnings comparable to the position the employee left due to disability, or declines an offer of reemployment in such a position. In addition, subsection (d) bars the payment of disability benefits for any month during which the employee does not cooperate with any required medical examinations or course of treatment or fails to provide information under regulations of the Office.

Subsection (e) of this section requires the Social Security Administration, notwithstanding any other provision of law, to provide the Office of Personnel Management with any information it requires in administering this section.

Section 8356. Early Retirement

Subsection (a) of this section provides that a covered employee who is an air traffic controller is subject to mandatory separation in accordance with section 8335(a) of title 5, United States Code, and a covered employee who is a law enforcement officer or a firefighter is subject to mandatory separation in accordance with section 8335(b) of that title. It also specifies that section 8335(d) of that title, relating to Presidential exemptions, applies to employees covered by this section.

Subsection (b) of this section provides that an air traffic controller, law enforcement officer, or firefighter who separates after completing 20 years of such employment (including any combination of such employment) is entitled to monthly payments from the Office of Personnel Management in an amount determined by the Office to reasonably approximate the monthly Social Security benefits the individual would receive on the basis of such employment if the individual were age 62. It also specifies that the amount of such monthly payments shall be increased annually by the Office on the basis of the percentage change in the Consumer Price Index.

Subsection (c) of this section provides that payments under this section commence on the later of the first day of the month after the month in which the employee or former employee becomes age 50 or the first day of the month after the month in which the employee separates from employment under the Federal Employees' Retirement System. It also specifies that such benefits end on the last day of the month in which the former employee becomes age 62.

Section 8357. Federal Employees' Savings Plan

Subsection (a) of this section establishes a Federal Employees' Savings Plan under which an employee covered by the Federal Employees' Retirement System may contribute, by means of allotments from pay, up to $5,000 per year to the employee's account in the Plan. Contributions to the Plan must be deposited in the Treasury to the credit on the Federal Employees' Retirement Fund.

Subsection (b) of this section provides that amount contributed to the Federal Employees' Savings Plan are not to be included in the gross income of the employee for the purposes of title 26, United States Code, relating to internal revenue.

Subsection (c) of this section provides that an employee's account balance in the Federal Employees' Savings Plan is available for distribution in the same manner as an individual retirement account under section 408 of title 26, United States Code, and any distribution shall be treated for the purposes of that title as if it were a distribution from an individual retirement account.

Section 8358. Federal Employees' Retirement Fund

Subsection (a) of this section establishes within the Civil Service Retirement and Disability Fund in the Treasury of the United States a Federal Employees' Retirement Fund, which includes agency contributions under section 8353 of title 5, United States Code, employee savings under section 8357 of that title, and interest earned by the Fund. It also makes the Fund available for payment of benefits, distributions, and expenses of the Office of Personnel Management in administering subchapter IV of chapter 83 of title 5, United States Code, without regard to the limitation in section 8348(a)(2) of title 5.

Subsection (b)(1) of this section requires the Office of Personnel Management to determine, before the beginning of each fiscal year, the normal cost, stated as a percentage of wages, of: (A) survivor benefits under section 8354(e) of title 5, United States Code, to the extent such cost exceeds the value of deceased employees' accounts, (B) disability benefits under section 8355 of title 5, and (C) expenses incurred by the Office in administering the Federal Employees' Retirement System. It further specifies that in making such determinations the Office must consider the value of accounts forfeited under section 8354(b) of that title, and makes those accounts available to defray the cost of survivor benefits, disability benefits, and administrative expenses. The Office is then authorized to vary the normal cost so determined on an agency-by-agency basis if the Office finds it appropriate because of differences in rate of disability between agencies. Subsection (b)(2) further requires the Office to determine, before the beginning of each fiscal year, the normal cost, stated as a percentage of wages, of payments under section 8356 of title 5 for air traffic controllers, law enforcement officers, and firefighters. Each agency employing an employee who is covered by the Federal Employees' Retirement System is required to contribute to the Fund, in addition to amounts provided in section 8353(a) of title 5, an amount equal to the percentage of wages determined under paragraph (1) of this subsection for each of the agency's covered employees and the percentage of wages determined under paragraph (2) of this subsection for each of the agency's covered employees who is an air traffic controller, law enforcement officer, or firefighter.

Section 8359. Administration; regulations

Subsection (a) of this section requires the Office of Personnel Management to administer subchapter IV of chapter 83 of title 5, United States Code, and to issue such regulations and perform or cause to be performed such acts as are necessary and proper to carry out that subchapter. In addition, the Office is authorized to enter into contracts, without regard to section 5 of title 41, United States Code, or other statute requiring competitive bidding, for the performance of any of the functions for which the Office is responsible under that subchapter.

Subsection (b) of this section requires claims to be in such form as the Office of Personnel Management may dictate and requires agencies to support such claims with such certification as the Office decides is needed to determine the rights of applicants. In addition, the Office or its designee is required to adjudicate all claims.

Subsection (c) of this section provides in paragraph (1) that, except as otherwise provided in paragraph (2) of this subsection or in other Federal laws, the money referred to in subchapter IV of chapter 83 of title 5, United States Code, is not assignable in law or equity, or subject to execution, levy, attachment, garnishment, or other legal process. It then provides in paragraph (2) that, notwithstanding any other provision of that subchapter, the Office shall regulate to provide rights and benefits for spouses and former spouses consistent with those provided under subchapter III of chapter 83, of title 5, United States Code.

Subsection (d) of this section provides that recovery of overpayments will be made under regulations of the Office of Personnel Management, which may include reduction of subsequent payments to the overpaid individual. It also permits waiver of recovery if the Office determines, in its sole discretion and under procedures it determines to be appropriate, that the individual is not at fault and that recovery would be contrary to equity and good conscience.

Subsection (e) of this section provides that the Office will consult with the same Board of Actuaries that advises on the Civil Service Retirement System on the actuarial status of the new Federal Employees' Retirement System.

Subsection (f) of this section permits the Office of Personnel Management to bring under the Federal Employees' Retirement System any individual who was covered by the Civil Service Retirement System and who elects in writing before January 1, 1987, to transfer. For purposes of determining coverage under Social Security and Civil Service Retirement, it also deems an individual who so elects to have first become employed by the United States after December 31, 1983. It requires the transfer and crediting to such employee's account under section 8354(a) of title 5, United States Code, of the individual's contributions, matching agency contributions, and interest on both, under the Civil Service Retirement and Disability System. In addition, the pre-transfer service of such an individual would be deemed qualifying employment for the purposes of determining entitlement to Social Security disability and survivors' benefits.

Subsection (g) of this section deems the Federal Employees' Retirement System a qualified plan for the purposes of title 26, United States Code, relating to internal revenue.

Subsection (2)(b) of the Act amends the analysis of chapter 83 of title 5, United States Code, to conform to the amendments made by subsection (a) of section 2.

Subsection (2)(c) of the Act amends section 8331 of title 5, United States Code, to exclude from the Civil Service Retirement System an employee covered by the Social Security Act by reason of having become employed by the United States after December 31, 1983, and to include only those Members of Congress who gave written notice prior to January 1, 1984, of their desire to be covered, so long as such election remains continuously in effect and the Member does not elect to terminate such coverage under section 8359(f) of title 5.

Section 3 of the Act amends section 8901(3)(A) of title 5, United States Code, to authorize coverage under the Federal Employees Health Benefits Program of annuitants who are under the Federal Employees' Retirement System, under the same conditions as apply to annuitants under other Federal retirement systems. Section 4 of the Act brings under the Federal Employees' Retirement System an employee who had been covered by the Civil Service Retirement System under section 203(a)(1) of Public Law 98-168 but who was not employed by the Government on December 31, 1983. It also provides for the transfer to the Federal Employees' Retirement Fund to the credit of the employee's account any contributions made by the employee under section 204(a) of that Public Law, the amount of the agency contribution under section 205(b) of that Public Law, the amount of any contribution deficiency with respect to that employee under section 205 of that Public Law, and an amount determined by the Office of Personnel Management to represent the interest such money earned while under the Civil Service Retirement and Disability System. In addition, such employee's Government service on and after January 1, 1984, is deemed employment under the Federal Employees' Retirement System for the purposes of subchapter IV of chapter 83 of title 5, United States Code.

Section 5 of the Act requires the Office of Personnel Management to determine the unfunded liability (including the effects of future pay increases and future cost-of-living adjustments) of the Civil Service Retirement System, and to notify the Secretary of the Treasury of the amounts necessary to amortize that unfunded liability in 40 equal annual installments. The Secretary is then required, on September 30, 1987, and at the end of each fiscal year thereafter, to make such a payment until the unfunded liability has been paid. The Office is also authorized to adjust the amount of the annual installment to reflect actuarial gains and losses.

Section 6 of the Act makes the amendments by sections 2 and 3 effective on January 1, 1986. It also requires the Secretary of the Treasury to advance to the Office of Personnel Management such moneys as the Director may require in making administrative arrangements for the Federal Employees' Retirement System, with such money to be repaid before January 1, 1996, including interest specified by the Secretary, out of administrative expense money in Federal Employees' Retirement Fund.